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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,042	06/25/2003	Marilyn F. Penman	4483 P	3785

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EXAMINER

CONLEY, SEAN EVERETT

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,042

Applicant(s)

PENMAN ET AL.

Examiner

Sean E. Conley

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/25/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/25/2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-3, 6, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Gallagher (U.S. Patent No. 5,831,242 A).

Regarding claim 1, Gallagher discloses a heater (10) comprising: a conductor assembly (wire (16) comprised of wires (20) and (22)), having a first end (32) and a second end (36); a first electrical conductor (30) electrically connected to said first end (32) of said conductor assembly; a second electrical conductor (34) electrically connected to said second end (36) of said conductor assembly (16); and an electrical plug (26) electrically connected to said first electrical conductor and said second electrical conductor (see figure 1; col. 2, lines 20-57).

Regarding claim 2, Gallagher discloses a conductor assembly that further comprises a conductor. Specifically, the conductor assembly is a nickel chromium resistive wire which is a conductor (see col. 2, lines 28-29).

Regarding claim 3, Gallagher discloses a conductor assembly that further comprises an insulating cover (23) covering a portion of said conductor (see figure 1; col. 2, lines 44-45).

Regarding claim 6, Gallagher discloses a conductor that is bendable. Specifically, it is shown in figure 1 that the conductor (wire assembly (16)) has been bent into a coiled position. Further, it is well known that all materials are bendable to some degree, including the nickel chromium resistive wire of wire assembly (16).

Regarding claim 20, Gallagher discloses an optional electrical switch (74) electrically connected between the conductor assembly and the electrical plug (see figure 4; col. 3, lines 22-25).

2. Claims 1-3, 5, 7, 9-11, 13-15, 17, and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Barnhart (U.S. Patent No. 6,413,476 B1).

Regarding claims 1 and 9, Barnhart discloses a candle container (3), having an interior and exterior; an aromatic candle (102) within the interior of the candle container (102); a conductor assembly (electric heating element (7) attached to conductive cup (6)), having a first end and a second end, said conductor assembly wrapped about and in contact with said exterior of said candle container (3); a first electrical conductor (16) electrically connected to said first end of said conductor assembly ((7) and (6)); a

Art Unit: 1744

second electrical conductor (14) electrically connected to said second end of said conductor assembly; and an electrical plug (see power cord (20)) electrically connected to said first and second electrical conductors (see figures 1-5; col. 2, lines 12-47; col. 3, line 41 to col. 4, line 57).

Regarding claims 2 and 10, Barnhart discloses that the conductor assembly comprises a conductor. Specifically, Barnhart teaches that the heat is dissipated from heating element (7), which is a conductor, through heat conductive cup (6), which is another conductor, to the candle container (3) (see col. 4, lines 47-58).

Regarding claims 3, 5, 11, and 13, Barnhart discloses that the conductor assembly further comprises an insulating cover covering a portion of the conductor. Specifically, Barnhart discloses that the conductor assembly ((6) and (7)) is located within a plastic housing (12) which is the insulating cover (see figure 2; col. 3, lines 45-50). It is well known that plastic is an electric insulator and the plastic housing (12) covers a portion of the conductor (either heating element (7) or conductive cup (6)).

Regarding claim 14, Barnhart discloses a conductor that is bendable. Specifically, it is shown in figure 4 that a portion of the conductor assembly (heating element (7)) has been bent into a curved position. Further, it is well known that all materials are bendable to some degree, including the materials used for heating element (7).

Regarding claims 7 and 15, Barnhart discloses that the conductor (heating element (7)) is a bendable tube (see figures 3-4).

Art Unit: 1744

Regarding claim 17, Barnhart discloses that the container (3) further comprises a heat conducting receptacle that is a cup (see figure 1; col. 4, lines 47-57).

Regarding claim 19, Barnhart discloses an electric switch electrically connected between the electrical plug and the conductor assembly (see figure 1; col. 4, lines 3-6).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

Art Unit: 1744

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gallagher as applied to claim 1 above, and further in view of Beideman (U.S. Patent No. 6,394,848 B1).

Gallagher fails to teach a heater that comprises a fuse in line with and electrically connected to the plug.

Beideman discloses a safety enhancement device for an electrical apparatus or appliances. Appliances with electric heating elements are potentially subject to electrical problems due to accident, misuse, excessive moisture and/or heat, which can cause wiring to short (see col. 1, lines 13-25). The principal object of Beideman is to provide a safety enhancement to protect an electrical apparatus or appliances from damage due to excessive heat or shorts (see col. 1, lines 45-55). The invention of Beideman specifically discloses a cordset plug (15) that includes two spades (30) and (31), with spade (31) connected to a neutral wire (17). Spade (30) is connected to a fuse (35) which is attached to positive wire (16) (see figures 3-6). In use, the cordset plug (15) is connected to a source of electrical energy and when the current rises rapidly the fuse (35) will blow and the current flow through wire (16) will be broken thereby shutting of the device (see col. 3, lines 14-39). This reference has been relied upon to teach that it is well known to include a fuse inline and electrically connected to the plug of an appliance in order to cut off power to the appliance in the event of a rapid

Art Unit: 1744

increase in the current which could potentially cause the device to fail or damage components.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Gallagher and include a fuse in line and electrically attached to the plug as taught by Beideman in order to shut off the device in the event of a rapid increase in the current to the heater which could damage the heater or potentially cause a fire from overheating.

4. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart as applied to claim 9 above, and further in view of Beideman (U.S. Patent No. 6,394,848 B1).

Barnhart fails to teach a heater that comprises a fuse in line with and electrically connected to the plug.

Beideman discloses a safety enhancement device for an electrical apparatus or appliances. Appliances with electric heating elements are potentially subject to electrical problems due to accident, misuse, excessive moisture and/or heat, which can cause wiring to short (see col. 1, lines 13-25). The principal object of Beideman is to provide a safety enhancement to protect an electrical apparatus or appliances from damage due to excessive heat or shorts (see col. 1, lines 45-55). The invention of Beideman specifically discloses a cordset plug (15) that includes two spades (30) and (31), with spade (31) connected to a neutral wire (17). Spade (30) is connected to a fuse (35) which is attached to positive wire (16) (see figures 3-6). In use, the cordset

Art Unit: 1744

plug (15) is connected to a source of electrical energy and when the current rises rapidly the fuse (35) will blow and the current flow through wire (16) will be broken thereby shutting of the device (see col. 3, lines 14-39). This reference has been relied upon to teach that it is well known to include a fuse inline and electrically connected to the plug of an appliance in order to cut off power to the appliance in the event of a rapid increase in the current which could potentially cause the device to fail or damage components.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Barnhart and include a fuse in line and electrically attached to the plug as taught by Beideman in order to shut off the device in the event of a rapid increase in the current to the heater which could damage the heater or potentially cause a fire from overheating.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart as applied to claim 9 above.

Barnhart discloses that the container (3) houses a scented wax that is melted by heat that is conducted from conductive cup (6) (see col. 4, lines 51-57). The material of cup (3) is not specifically taught, however, it is clear that it must be a heat conductive material since the wax is melted. Although the material is not specifically recited, modifying the material would have been obvious at the time of applicant's invention because of the legal precedent established by prior case law In Re Aller, 105 USPQ 23 (CCPA 1955) which states that the use of preferred materials discovered by routine

Art Unit: 1744

experimentation is ordinarily within the skill of the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a conductive material such as glass, metal, and ceramic for the container (3) in order to melt the wax and release the fragrance and furthermore Barnhart teaches that metal is a suitable conductor of heat (see col. 3, lines 52-53; cup (6) is made of metal).

6. Claims 4 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart as applied to claims 2 and 10 above, and further in view of Theilacker et al. (U.S. Patent No. 5,138,138).

Barnhart fails to specifically teach the material used for the heating element.

Theilacker et al. discloses a heating system for an operating table that utilizes a heating pad (2) which comprises a heating conductor (16) made up of an electric conductor (18) that consists of an aluminum wire or aluminum sheet (see col. 3, line 67 to col. 4, line 20; col. 8, line 60 to col. 9, line 33). This reference has been relied upon to teach that it is well known to use aluminum wire as an electric conductor to dissipate heat.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Barnhart and use aluminum as the material for the conducting heating element (7) as taught by the heating pad of Theilacker et al. since it has been held that aluminum is a known conductor of heat. Additionally, although Barnhart fails to specifically teach the material of the conductor, modifying the material would have been obvious at the time of applicant's invention

Art Unit: 1744

because of the legal precedent established by prior case law In Re Aller, 105 USPQ 23 (CCPA 1955) which states that the use of preferred materials discovered by routine experimentation is ordinarily within the skill of the art.

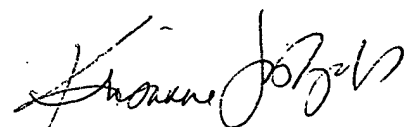
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean E. Conley whose telephone number is 571-272-8414. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEC *AEC.*
November 18, 2005


KRISANNE JASTRZAB
PRIMARY EXAMINER